

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

AMANDA M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. C19-5522 BHS

ORDER REVERSING DENIAL OF  
BENEFITS AND REMANDING  
FOR FURTHER PROCEEDINGS

**I. BASIC DATA**

Type of Benefits Sought:

( ) Disability Insurance

(X) Supplemental Security Income

Plaintiff's:

Sex: Female

Age: 30 at the time of alleged disability onset.

Principal Disabilities Alleged by Plaintiff: Dyslexia, social anxiety, anemia, posttraumatic stress disorder, depression, back, hip, and knee problems, memory loss, ringing ears, and acid reflux. Admin. Record ("AR") (Dkt. # 7) at 122-23.

Disability Allegedly Began: August 31, 2016

Principal Previous Work Experience: None

Education Level Achieved by Plaintiff: High school diploma

## II. PROCEDURAL HISTORY—ADMINISTRATIVE

Before Administrative Law Judge (“ALJ”) Allen G. Erickson:

Date of Hearing: March 6, 2018

Date of Decision: June 22, 2018

Appears in Record at: AR at 15–29

Summary of Decision:

The claimant has not engaged in substantial gainful activity since August 31, 2016, the amended alleged onset date. *See* 20 C.F.R. §§ 416.971–76.

The claimant has the following severe impairments: Anxiety disorder, dyslexia, and obesity. *See* 20 C.F.R. § 416.920(c).

The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. *See* 20 C.F.R. §§ 416.920(d), 416.925, 416.926.

The claimant has the residual functional capacity (“RFC”) to perform medium work as defined in 20 C.F.R. § 416.967(c), with limitations. She can occasionally climb ladders, ropes, or scaffolds. She can understand, remember, and apply short, simple instructions. She can perform routine, predictable tasks not in a fast-paced production type environment. She can make simple work decisions and be exposed to few workplace changes. She can have no interaction with the general public and occasional interaction with co-workers.

The claimant has no past relevant work. *See* 20 C.F.R. § 416.965.

The claimant was a younger individual (age 18–49) on the date the application was filed. *See* 20 C.F.R. § 416.963.

The claimant has at least a high school education and is able to communicate in English. *See* 20 C.F.R. § 416.964.

Transferability of job skills is not an issue because the claimant does not have past relevant work. *See* 20 C.F.R. § 416.968.

1           Considering the claimant's age, education, work experience, and  
 2           RFC, there are jobs that exist in significant numbers in the national  
 3           economy that the claimant can perform. *See* 20 C.F.R. §§ 416.969,  
 416.969(a).

4   Before Appeals Council:

5           Date of Decision: April 11, 2019

6           Appears in Record at: AR at 1–3

7           Summary of Decision: Denied review.

### 8                           **III.       PROCEDURAL HISTORY—THIS COURT**

9           Jurisdiction based upon: 42 U.S.C. § 405(g)

10          Brief on Merits Submitted by (X) Plaintiff (X) Commissioner

### 11                           **IV.       STANDARD OF REVIEW**

12          Pursuant to 42 U.S.C. § 405(g), the Court may set aside the Commissioner's  
 13          denial of Social Security benefits when the ALJ's findings are based on legal error or not  
 14          supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d  
 15          1211, 1214 n.1 (9th Cir. 2005). "Substantial evidence" is more than a scintilla, less than  
 16          a preponderance, and is such relevant evidence as a reasonable mind might accept as  
 17          adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971);  
 18          *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for  
 19          determining credibility, resolving conflicts in medical testimony, and resolving any other  
 20          ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
 21          While the Court is required to examine the record as a whole, it may neither reweigh the  
 22          evidence nor substitute its judgment for that of the ALJ. *See Thomas v. Barnhart*, 278

1 F.3d 947, 954 (9th Cir. 2002). “Where the evidence is susceptible to more than one  
2 rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion  
3 must be upheld.” *Id.*

#### 4 **V. EVALUATING DISABILITY**

5 Plaintiff bears the burden of proving she is disabled within the meaning of the  
6 Social Security Act (“Act”). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The  
7 Act defines disability as the “inability to engage in any substantial gainful activity” due to  
8 a physical or mental impairment which has lasted, or is expected to last, for a continuous  
9 period of not less than twelve months. 42 U.S.C. § 1382c(3)(A). A claimant is disabled  
10 under the Act only if her impairments are of such severity that she is unable to do her  
11 previous work, and cannot, considering her age, education, and work experience, engage  
12 in any other substantial gainful activity existing in the national economy. 42 U.S.C. §  
13 1382c(3)(B); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098–99 (9th Cir. 1999).

14 The Commissioner has established a five-step sequential evaluation process for  
15 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R.  
16 § 416.920. The claimant bears the burden of proof during steps one through four.  
17 *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009). At step  
18 five, the burden shifts to the Commissioner. *Id.*

#### 19 **VI. ISSUES ON APPEAL**

20 Whether the ALJ harmfully erred in discounting Plaintiff’s testimony regarding  
21  
22

1 the severity of her anxiety symptoms.<sup>1</sup>

## 2 VII. DISCUSSION

### 3 A. The ALJ Erred in Discounting Plaintiff's Symptom Testimony

4 Plaintiff argues that the ALJ harmfully erred in discounting her testimony  
5 regarding the severity of Plaintiff's anxiety symptoms. Pl. Op. Br. at 2–4. Plaintiff  
6 testified that she has panic attacks and social anxiety. AR at 48, 254, 293. She testified  
7 that she has been prescribed medications, but they either did not work or made her sick.  
8 AR at 51–52. Plaintiff testified that she rarely leaves the house. AR at 59, 257. She  
9 testified that she often throws up when she gets to work. AR at 68. Plaintiff testified that  
10 she leaves her accommodated job at Goodwill early two days a week. AR at 69.

11 The Ninth Circuit has “established a two-step analysis for determining the extent  
12 to which a claimant’s symptom testimony must be credited.” *Trevizo v. Berryhill*, 871  
13 F.3d 664, 678 (9th Cir. 2017). The ALJ must first determine whether the claimant has  
14 presented objective medical evidence of an impairment that “‘could reasonably be  
15 expected to produce the pain or other symptoms alleged.’” *Id.* (quoting *Garrison v.*  
16 *Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014)). At this stage, the claimant need only  
17 show that the impairment could reasonably have caused some degree of the symptoms;

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19 <sup>1</sup> In her “Errors Alleged” section, Plaintiff alleged that the ALJ “erroneously rejected the  
20 opinion of Plaintiff’s treating physician, Dr. Lomarda.” Pl. Op. Br. (Dkt. # 9) at 1. But  
21 Plaintiff’s argument focuses only on the ALJ’s analysis of Plaintiff’s symptom testimony; it does  
22 not mention Dr. Lomarda. *See id.* at 2–4. Plaintiff has failed to show harmful error with respect  
to the ALJ’s treatment of evidence from Dr. Lomarda. *See Indep. Towers of Wash. v. Wash.*, 350  
F.3d 925, 929 (9th Cir. 2003) (“The art of advocacy is not one of mystery. Our adversarial  
system relies on the advocates to inform the discussion and raise the issues to the court.  
Particularly on appeal, we have held firm against considering arguments that are not briefed.”).

1 she does not have to show that the impairment could reasonably be expected to cause the  
 2 severity of the symptoms alleged. *Id.* The ALJ found that Plaintiff met this step because  
 3 her medically determinable impairments could reasonably be expected to cause the  
 4 symptoms she alleged. AR at 22.

5 If the claimant satisfies the first step, and there is no evidence of malingering, the  
 6 ALJ may only reject the claimant's testimony "by offering specific, clear and convincing  
 7 reasons for doing so. This is not an easy requirement to meet." *Trevizo*, 871 F.3d at 678  
 8 (quoting *Garrison*, 759 F.3d at 1014–15). In evaluating the ALJ's determination at this  
 9 step, the Court may not substitute its judgment for that of the ALJ. *Fair v. Bowen*, 885  
 10 F.2d 597, 604 (9th Cir. 1989). As long as the ALJ's decision is supported by substantial  
 11 evidence, it should stand, even if some of the ALJ's reasons for discrediting a claimant's  
 12 testimony fail. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

13 The ALJ discounted Plaintiff's testimony for two reasons. AR 22–24. The ALJ  
 14 reasoned that Plaintiff's complaints were out of proportion with the medical evidence,  
 15 and inconsistent with Plaintiff's daily activities.<sup>2</sup> *Id.*

16 The ALJ's first reason for discounting Plaintiff's symptom testimony does not  
 17 withstand scrutiny. An ALJ may reject a claimant's symptom testimony when it is

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18 <sup>2</sup> The Court requested supplemental briefing "addressing whether the ALJ erred in  
 19 rejecting Plaintiff's testimony regarding the severity of her anxiety symptoms based on  
 20 Plaintiff's activities of daily living." Order Req. Supplemental Br. and Renoting Pl.'s Mot., Dkt.  
 # 12, at 2. Both parties submitted briefs in response to the Court's Order. *See* Dkts. ## 13–14.

21 The Government argues in its supplemental response that Plaintiff waived arguments  
 22 made for the first time in her reply. Dkt. 13 at 2. This argument is without merit given that the  
 Court requested supplemental briefing directly addressing these arguments, which cures any  
 prejudice based on due process.

1 contradicted by the medical evidence. *See Carmickle v. Comm’r, Soc. Sec. Admin.*, 533  
2 F.3d 1155 (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir.1995)). But the ALJ  
3 must explain how the medical evidence contradicts the Plaintiff’s testimony. *See Dodrill*  
4 *v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). Furthermore, the ALJ “cannot simply pick  
5 out a few isolated instances” of medical health that support his conclusion, but must  
6 consider those instances in the broader context “with an understanding of the patient’s  
7 overall well-being and the nature of her symptoms.” *Attmore v. Colvin*, 827 F.3d 872,  
8 877 (9th Cir. 2016).

9       The ALJ discounted Plaintiff’s testimony in part because her “actual treatment has  
10 been overall minimal with few medications prescribed for anxiety, and only some periods  
11 of counseling.” AR at 23. But Plaintiff was in mental health counseling for several  
12 years. *See* AR at 340–428, 521–634. Absent a more detailed explanation, the ALJ’s  
13 statement here does not contradict Plaintiff’s testimony. *See Brown-Hunter v. Colvin*,  
14 806 F.3d 487, 493 (9th Cir. 2015).

15       The ALJ further noted that Plaintiff’s psychiatric screenings during mental health  
16 counseling indicated anxiety and mood issues, but normal appearance, speech, and  
17 thought process, as well as no psychotic symptoms. *See* AR at 23. Similarly, the ALJ  
18 noted that examining psychologist Alysa Ruddell, Ph.D., stated that Plaintiff had  
19 symptoms of anxiety, but did not diagnose dyslexia or any learning disorder. *See* AR at  
20 23–24. The ALJ erred here because he failed to explain why any of this contradicted  
21 Plaintiff’s testimony. *See Brown-Hunter*, 806 F.3d at 493. Plaintiff alleged anxiety, and  
22 the records to which the ALJ referred documented anxiety symptoms. *See, e.g.*, AR at

1 391, 394, 397, 399, 401. That Plaintiff did not have other psychological symptoms is  
2 irrelevant.

3 The ALJ's second reason for discounting Plaintiff's symptom testimony—  
4 inconsistency with her daily activities—also fails. An ALJ may reject a plaintiff's  
5 symptom testimony based on her daily activities if they contradict her testimony or "meet  
6 the threshold for transferable work skills." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.  
7 2007) (citing *Fair*, 885 F.2d at 603). However, "the mere fact that a plaintiff has carried  
8 on certain daily activities, such as grocery shopping, driving a car, or limited walking for  
9 exercise, does not in any way detract from her credibility as to her overall disability. One  
10 does not need to be 'utterly incapacitated' in order to be disabled." *Vertigan v. Halter*,  
11 260 F.3d 1044, 1050 (9th Cir. 2001) (quoting *Fair*, 885 F.2d at 603).

12 The activities the ALJ cited here are basic life activities and do not contradict  
13 Plaintiff's testimony. That Plaintiff was capable of "manag[ing] her personal  
14 care/hygiene," and "fix[ing] herself simple meals," for example, does not contradict her  
15 testimony that she has panic attacks and rarely leaves the house. AR at 24. Similarly, the  
16 fact that Plaintiff goes to the grocery store with her mother and socializes via the internet  
17 does not indicate that she could handle an ordinary work environment where she would  
18 have to interact with others unaccompanied. *See id.* Although Plaintiff works part-time  
19 at Goodwill, the record indicates that she struggles to maintain even a shortened work  
20 schedule due to panic attacks. *See* AR at 68–69. The ALJ thus erred in rejecting  
21 Plaintiff's testimony based on her activities of daily living.

22 **B. Scope of Remand**



1 Plaintiff cursorily asks the Court to remand this matter for an award of benefits.  
2 Pl. Op. Br. at 4. Remand for an award of benefits “is a rare and prophylactic exception to  
3 the well-established ordinary remand rule.” *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th  
4 Cir. 2017). Because Plaintiff presents no argument in support of her request, the Court  
5 finds it has not been adequately argued. *See Maldonado v. Morales*, 556 F.3d 1037, 1048  
6 n.4 (9th Cir. 2009) (“Arguments made in passing and inadequately briefed are waived.”).  
7 The Court therefore remands this matter for further administrative proceedings.

8 On remand, the ALJ shall reevaluate Plaintiff’s testimony regarding the severity of  
9 her anxiety. The ALJ shall conduct all further proceedings necessary to reevaluate the  
10 disability determination in light of this opinion.

#### 11 **VIII. ORDER**

12 Therefore, it is hereby ORDERED that the Commissioner’s final decision denying  
13 Plaintiff disability benefits is REVERSED and this matter is REMANDED for further  
14 administrative proceedings under sentence four of 42 U.S.C. § 405(g).

15 Dated this 15th day of April, 2020.

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18 BENJAMIN H. SETTLE  
United States District Judge  
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